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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. SEAN HAMMOND, Defendant and Appellant.	H033623 (Santa Clara County Super. Ct. No. CC891848)

Defendant Sean Hammond was charged with one count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and one count of transportation of cocaine base (Health & Saf. Code, § 11352, subd. (a)). A jury found defendant not guilty of possession for sale, but guilty of the lesser included offense of possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). The jury also found defendant guilty of transportation of cocaine base. In a bifurcated proceeding, the court found true an enhancement allegation (Health & Saf. Code, §§ 11370, subds. (a), (c), 11370.2, subd. (a)) that defendant had a prior conviction for transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), which occurred in 2001.

During trial, the court denied defendant's request that "the jury make a finding that the transportation charge was for personal use" and noted defendant's request that "the court make its own finding that the transportation was for personal use." At sentencing,

defendant renewed the request, which was denied. The court was satisfied that defendant possessed the cocaine base for sale, not for personal use, and stated that "even when . . . a jury acquits somebody, the court . . . can consider all the circumstances and all the factors in sentencing." The court sentenced defendant to the upper term of five years in prison on the transportation count and the upper term of three years on the possession count, but ordered the latter sentence stayed pursuant to Penal Code section 654. Since it sentenced defendant to the upper term, the court stayed the three-year sentence on the enhancement.

On appeal, defendant contends that the court abused its discretion when it denied his two *Marsden*[1] motions to substitute counsel, that the court erred in calculating the restitution fines, and that the fines must be reduced from $2,000 to $1,000.[2] The Attorney General agrees that the restitution fines must be reduced. We conclude the court did not abuse its discretion when it denied the *Marsden* motions, accept the Attorney General's concession with regard to the restitution fines, and order a reduction in the restitution fines. As so modified, we affirm the judgment.

FACTS

I. Prosecution Case

On January 5, 2008, San Jose Police Officer Antonio Figueroa stopped a car that defendant was driving. At trial, the parties stipulated that it was a lawful stop. As defendant rolled down his window, the officer smelled a strong odor of marijuana coming

[1] *People v. Marsden* (1970) 2 Cal.3d 118.

[2] In his opening brief, defendant also argued that he should have been sentenced under the Substance Abuse and Crime Prevention Act of 2000 (Pen. Code, §§ 1210, et seq.), commonly known as Proposition 36, as amended by voter initiative in November 2008. In response, the Attorney General stated that the initiative was not approved by the voters. In his reply brief, defendant stated that he had misread section 1210 to have been amended, acknowledged that the proposed amendment was defeated, and withdrew this claim.

from the car and noticed that defendant had ashes on the front of his sweatshirt. Defendant said he " 'just got done smoking some' " marijuana. As he stepped out of the car, defendant reached into his shirt pocket and pulled out a napkin that contained marijuana. Defendant kept reaching for his pockets. The officer handcuffed defendant, searched his pockets, and found a plastic baggie that contained 12 bindles of rock cocaine, each weighing about .38 grams, which totals about 4.5 grams.

As evidence of intent to sell, the prosecution offered evidence that (1) defendant had been convicted of possession of cocaine for sale in 2001; (2) defendant's cell phone rang more than 20 times during the 45 minutes that Officer Figueroa was with defendant; (3) the calls were all from different numbers; and (4) defendant had $1,147 in cash in his wallet. An expert testified that these facts, together with the absence of paraphernalia for using cocaine, supported a conclusion of possession for sale.

II. Defense Case

Defendant did not testify. To explain the amount of cash in his wallet, defendant introduced copies of a repair estimate for damage to his car and a check from his insurance company for $1,194.73. He elicited testimony from the prosecution expert that drug dealers do not use "dope" when they are selling drugs, that cocaine can be smoked with marijuana without paraphernalia, that the amount and the packaging of the cocaine on defendant's person could be for personal use, and that the denominations of the cash defendant had were not what a street dealer would have.

DISCUSSION

I. Marsden Motions

Defendant contends that the trial court abused its discretion when it denied his *Marsden* motions to relieve his attorney and appoint new counsel after he and his

appointed counsel became embroiled in an irreconcilable conflict that defendant did not cause. As we explain, the trial court did not abuse its discretion.

A. Procedural Background

The court conducted a preliminary hearing on May 1, 2008, and defendant was held to answer. Shortly after the information was filed, defendant (not his counsel) filed a handwritten request with the court for discovery, including fingerprint test results and the videotape from the camera in Officer Figueroa's patrol car. He also asked that a *Pitchess*[3] motion be filed on his behalf for discovery of Officer Figueroa's personnel records.

Defendant pleaded not guilty on May 12, 2008. He did not waive time and the matter was set for trial on June 30, 2008. In June 2008, defendant's case was transferred to a different public defender. Defendant waived time on June 30, 2008, and the trial date was continued.

On July 14, 2008, defense counsel filed a *Pitchess* motion seeking discovery of the personnel records of Officer Figueroa and Officer Gonzalez, the officer who assisted with defendant's arrest. In the motion, defendant (1) denied possessing crack cocaine; (2) stated that "[n]o scale, pay/owe sheets, packaging materials, pager or weights were found in his possession"; and (3) alleged that Officer Figueroa planted the drugs on defendant, fabricated evidence, and falsified his report.

B. First *Marsden* Motion

On July 16, 2008, the court conducted a *Marsden* hearing at defendant's request. In a closed hearing, which the prosecutor did not attend, defendant complained of several problems with his counsel and his case.

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[3] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Defendant stated that the $1,147 he had on the night of his arrest came from an insurance settlement, that he told defense counsel that he had documents that would explain the amount of money, that the officer told him he would get a court date to explain why he had the money, and that he never got a court date. Defense counsel explained that she had received a check stub from an insurance company for $1,173 but did not have evidence that the check had been cashed. The court reassured defendant that it was not unusual not to present this evidence at the preliminary hearing and explained that, given the number of "rocks" of cocaine in his possession, the prosecutor was going to charge possession for sale even if defendant did not have the money.

Defendant wanted his attorney to fingerprint the baggie that the cocaine was in and complained that she had refused to do so. Defense counsel stated that she had asked the prosecutor whether he was going to fingerprint the baggie and he had decided not to, since it was found on defendant's person. Defense counsel explained that she had decided, "as a tactical call," not to test the baggie for fingerprints for two reasons. First, the prosecution is entitled to know if defendant has the baggie fingerprinted and can comment on that fact at trial, if defendant elects not to use the fingerprint evidence. Second, in her experience, fingerprints cannot be lifted from plastic bags. The court told defendant that the prosecution would rarely fingerprint the baggie, since the drugs were on his person; that if his prints are on the baggie, that is more incriminating evidence that he would have to turn over to the prosecution; and that the decision was a strategic call for his counsel to make.

Defendant complained that after he was stopped by Officer Figueroa, his 2005 conviction for possession of cocaine base for sale came up in the background check and indicated that he was on parole for that conviction. However, that was incorrect, since his 2005 conviction was overturned on appeal. (*People v. Hammond* (Dec. 5, 2006, H028901) [nonpub. opn.].) Defendant told the court that he had asked defense counsel to file a motion regarding the use of that conviction. Defense counsel responded that she

had told defendant that the police can rely on whatever information comes up in the background check as good faith information. The court told defendant that defense counsel had given him "the right legal advice" and stated that he (defendant) probably did not want to hear it because it was not favorable to him.

Defense counsel told the court that her research had disclosed that evidence regarding defendant's 2005 conviction may come in at trial under Evidence Code section 1101, subdivision (b), even though that conviction was reversed, and that defendant also had a prior conviction for possession of cocaine for sale in 2001 that would come in. She told the court that defendant disagreed with her about the admissibility of the prior convictions and that they had gone "round and round about that" and that defendant was "perhaps confused" about how grave his situation was.

Defendant told the court that the officer pulled him over because his windows were tinted. Defendant conceded that the windows were tinted but stated that the tinting was done within DMV standards. Defendant complained that defense counsel failed to investigate whether the stop was valid based on defendant's tinted windows and complained about the way the officer photographed the tinted windows, arguing that they looked too dark in the photographs. Defense counsel told the court that she had tried to investigate this issue, but defendant had crashed his car and it had been impounded and sold for salvage. She said her investigator tried to track it down, but the car was gone and they could not photograph it. Defense counsel also told the court that the officer had an independent basis for the vehicle stop, since he reported that both of defendant's brake lights were out.

Defendant denied that his taillights were out and questioned why the officer did not photograph the taillights. Defendant told the court that he did not possess drugs and that the officer fabricated his testimony. He complained that, although the officer claimed he smelled marijuana, he did not do any sobriety testing. Defense counsel told the court she had filed a *Pitchess* motion to follow up on defendant's claim that the

officer fabricated evidence. The court told defendant that the officer did not have to photograph his taillights and that the failure to photograph defendant's taillights was not defense counsel's fault.

Defense counsel told the court that defendant thought there were surveillance cameras on Officer Figueroa's squad car and wanted the videotape of the stop. She had told defendant that San Jose Police does not put cameras in its squad cars, but for a long time, defendant did not want to accept that as fact. Defense counsel told the court that has happened with a lot of the issues in the case and that defendant's response is not that he does not understand what she is saying, but that he does not agree with what she is saying.

Defendant told the court that he was supposed to go to trial on June 30, 2008, and that he had to waive his speedy trial right because the *Pitchess* motion was not done before trial. Defense counsel explained that her predecessor was waiting to find out about the status of the car before filing the *Pitchess* motion.

Defendant told the court that his attorney "cussed" at him when he asked her why she was not having the baggie fingerprinted. First, she said, "[I]t is what it is." When he asked what that meant, she said, "It is what it is" again. He asked her another question, which he could not recall, and she responded, "[I] don't give an F about it." Defendant told the court he feels uncomfortable with defense counsel and that he was not going to plead to something he did not do. Defense counsel told the court she could not recall exactly what she said but she did not doubt that she swore at defendant. She said they were discussing issues they had discussed before and disagreeing about some of the "strategic calls" she had to make, like whether to fingerprint the baggie and the risks related to the evidence of defendant's prior convictions. Defense counsel agreed she should not have sworn at defendant, but stated that she could work with defendant. She explained that she often has to convey bad news to defendant and that he gets frustrated

with the options they are left with. She told the court that she would try to explain things to defendant in more detail.

The court calculated defendant's maximum exposure in this case as eight years; defense counsel thought it was nine years four months. Defense counsel told the court that defendant had an open domestic violence case to which he had pleaded no contest, that the domestic violence case was trailing this drug case for sentencing, and that the prosecution had offered three years eight months to resolve both cases. Defendant told the court that he thought he would get probation in the domestic violence case and that defense counsel was telling him that he "could be facing nine years, basically as a scare tactic." He also said he understood she was doing her job, but he felt like he was "getting put to the side." Defense counsel told the court she did believe defendant would get probation on the domestic violence case.

The court told defendant that he had "a tough road ahead," that his attorney had done a lot of work on the case, and that she was a very talented attorney. The court addressed the points that defendant had raised and denied the motion.

At the hearing on the *Pitchess* motion, the court did an in camera review of Officer Figueroa's file and reported that no relevant discovery was found.

C. Second *Marsden* Motion

At the beginning of the first day of trial, on September 23, 2008, before in limine motions, defendant made a second motion to substitute counsel. He told the trial judge that he had made a previous *Marsden* motion, in which he complained about a lack of communication and about the language that counsel used toward him. He told the court that defense counsel had asked him the day before whether his family was going to be able to bring him clothes so he could dress out for trial. He complained that when he told defense counsel that his family members were unable to bring him clothes and asked her to have the "court appoint" him some clothes, defense counsel said "she wasn't a maid"

and used foul language toward him. Defendant did not tell the court specifically what defense counsel said.

Defense counsel told the court that she was discussing the court's settlement offer and her recommendation with defendant, that he seemed confused about whether he had waived time, and that she was concerned that he was not grasping the gravity of his situation with respect to the exposure and the offer that was on the table. She told him that she thought she had spent enough time explaining it to him and that if he wanted to go to trial, he needed to talk to his family about providing clothes. Defense counsel told the court, "As the court is aware, in the event that a person the public defender represents cannot provide their own clothing, we will take measures to ensure that they are dressed out for court, and I will be providing clothes to the jail this evening to ensure that Mr. Hammond is dressed out." With respect to the language issue, counsel initially stated, "I don't really have an opinion about that." She then explained that it was "probably a function of [her] frustration with respect to . . . going over well travelled territory with Mr. Hammond, but it's never been directed . . . towards him with regard to a character accusation or something like that." The court denied the motion.

D. Governing Legal Principles

The rules governing our inquiry into alleged *Marsden* error are well settled. "When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [Citation.] The decision whether to grant a requested substitution is within the discretion of the trial court; appellate courts

will not find an abuse of that discretion unless the failure to remove appointed counsel and appoint replacement counsel would substantially impair the defendant's right to effective assistance of counsel." (*People v. Abilez* (2007) 41 Cal.4th 472, 487-488 (*Abilez*), internal quotation marks omitted.)

The denial of a defendant's motion to substitute counsel implicates the Sixth Amendment. "On direct review of the refusal to substitute counsel, the Ninth Circuit Court of Appeals considers the following three factors: (1) timeliness of the motion; (2) adequacy of the court's inquiry into the defendant's complaint; and (3) whether the conflict between the defendant and his attorney was so great that it resulted in a total lack of communication preventing an adequate defense. [Citations.] It found, and we agree, that these elements are consistent with California law under *People v. Marsden, supra,* 2 Cal.3d 118, and its progeny." (*Abilez, supra,* 41 Cal.4th at pp. 490-491, internal quotation marks omitted.)

E. Analysis

The trial court's core duty under *Marsden* is to conduct an adequate inquiry into the defendant's reasons for his dissatisfaction with counsel, by permitting the defendant to fully air his complaints and eliciting a response from defense counsel. Here, the trial court's conduct of the *Marsden* hearings was exemplary and defendant does not argue otherwise.

Defendant agrees that the "court correctly found that counsel's trial preparation was adequate" but argues that the trial court came to the wrong conclusion when it determined that there was not an "irreconcilable conflict that ineffective representation is likely to result." (*Abilez, supra,* 41 Cal.4th at pp. 487-488.)

Defendant argues, "After the first [*Marsden*] hearing, the Superior Court refused to find an irreparable breakdown in the relationship, saying counsel would 'work with' [defendant] and would no longer curse. . . . However, in the ensuing weeks counsel

failed to follow those admonitions, resulting in [defendant's] complete loss of confidence in counsel." He argues that counsel's actions between the two motions "did nothing to amplify [defendant's] faith in [counsel] but only further undermined it."

Defendant made his second *Marsden* motion approximately 10 weeks after the first motion. During the hearing on the second *Marsden* motion, defendant only complained about his discussions with counsel the day before regarding clothing for trial. He did not complain of any communication problems with counsel during the almost 10-week period between the first *Marsden* motion and the second *Marsden* motion. The second *Marsden* motion was heard by the trial judge, not the judge that conducted the first *Marsden* hearing. Defendant told the court that he had made a previous *Marsden* motion and explained, "It was like our communication, it was bad. [¶] I spoke with [the first judge] and let him know what it was like, what the situation was, what was going on as far as the language that was being used towards me." Defendant did not renew any of the other arguments he made at the first hearing. He complained only of the problem relating to the provision of clothing for trial and that defense counsel swore at him again. Thus the record does not support defendant's argument that defense counsel failed to follow the court's admonitions for weeks after the first *Marsden* motion.

Defendant argues that "Based on [defendant's] renewed complaints, the court at the second *Marsden* hearing should have focused on the breakdown in the attorney-client relationship. Instead it ignored that breakdown, focusing solely on whether counsel was performing competently" and that "[b]y failing to apply the correct legal standard, the court abused its discretion." During the second *Marsden* hearing, defendant complained only of his discussions with counsel the day before regarding clothing for trial, explained why his family could not provide clothing, and stated that in the course of that discussion defense counsel swore at him. He told the court that defense counsel had used foul language before and stated, "we really don't have a communication between each other."

The court asked defense counsel to address both the clothing issue and the use of foul language. Defense counsel explained that the public defender would be providing clothes to defendant so that he would be "dressed out" for trial. She also addressed the communication issue, explaining that defendant may be confused regarding the "time waived posture" of his case, that she was concerned that he was not "grasping the gravity of his situation with respect to the exposure and the offer that's on the table," and that it was not the first time they had discussed the settlement offer and "his predicament." She explained that she probably swore at defendant out of frustration at having to go "over well-travelled territory" with him. The record reflects that the court heard from both defendant and defense counsel regarding the communication issue; it does not support defendant's contention that the court ignored the communication issue and consequently applied the wrong legal standard when deciding the *Marsden* motion. The court listened to both defendant and defense counsel's comments and we infer from its denial of the motion that it determined that they had not "become embroiled in such an irreconcilable conflict that ineffective representation is likely to result." (*Abilez, supra,* 41 Cal.4th at pp. 487-488.)

Moreover, that defendant and defense counsel disagreed about the exposure in the case or whether to accept a settlement offer or try the case, does not establish an irreconcilable conflict that requires that appointed counsel be removed. In *People v Jackson* (2009) 45 Cal.4th 662, 688, the California Supreme Court recently reiterated that, " ' "[I]f a defendant's claimed lack of trust in, or inability to get along with, an appointed attorney were sufficient to compel appointment of substitute counsel, defendants effectively would have a veto power over any appointment and by a process of elimination could obtain appointment of their preferred attorneys, which is certainly not the law." ' " (*Ibid*.) In addition, "A defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense. [Citation.] Tactical disagreements between the defendant and his attorney do not by

themselves constitute an irreconcilable conflict. . . . [C]ounsel is captain of the ship and can make all but a few fundamental decisions for the defendant." (*Ibid*., internal quotation marks omitted.)

This case is distinguishable from two federal cases that defendant relies on, *United States v. D'Amore* (9th Cir. 1995) 56 F.3d 1202 (*D'Amore*), overruled on another ground as stated in *United States v. Garrett* (9th Cir. 1999) 179 F.3d 1143, 1145, and *United States v. Adelzo-Gonzalez* (9th Cir. 2001) 268 F.3d 772 (*Adelzo-Gonzalez*).

In *D'Amore*, the defendant's appointed counsel filed a written motion to withdraw and to permit the defendant to substitute retained counsel the day before the hearing on the government's petition to revoke the defendant's probation. The appellate court held that the district court abused its discretion when it denied the motion on the grounds of delay. The appellate court explained that the Sixth Amendment grants a criminal defendant a qualified right to hire counsel of his or her choice, but that the right to substitute retained counsel can be abridged to serve a "compelling purpose." (*D'Amore*, *supra*, 56 F.3d at p. 1204.) This case is procedurally distinguishable because it involves a motion to relieve appointed counsel and substitute a different appointed attorney and therefore does not implicate the defendant's right to hire counsel of his or her choice. However, the *D'Amore* court reviewed the same factors at issue on a motion to substitute appointed counsel: (1) the adequacy of the district court's inquiry, (2) the extent of the conflict between the defendant and his appointed counsel, and (3) the timeliness of the motion, including any inconvenience or delay that would result from granting the motion,. (*Id.* at pp. 1204-1205; cf. *Abilez*, *supra*, 41 Cal.4th at pp. 490-491.) The appellate court in *D'Amore* held that the district court's inquiry into the grounds for substituting counsel was inadequate because the proceedings were "extremely abbreviated," none of the attorneys spoke, and the court did not ask the defendant or his lawyer about the conflict between them or the length of the necessary delay. (*D'Amore*, at p. 1205.) In contrast, the court here conducted an extensive inquiry at the first

Marsden hearing, questioning both defendant and his counsel on the numerous points raised. The second hearing was more abbreviated, since defendant only complained about counsel's response to the clothing issue, but the court conducted a full inquiry into that issue.

This case is also distinguishable from *D'Amore* with regard to the extent of the conflict between the defendant and his counsel. In an affidavit, the attorney in *D'Amore* told the court that the defendant would not cooperate with him to prepare for the revocation hearing and that the attorney was therefore unable to represent him. In his affidavit, the defendant in *D'Amore* complained that the attorney had not spent much time with him, had not attempted to pursue a plea bargain and failed to contact witnesses. The defendant also stated that he refused to speak with the attorney. (*D'Amore*, *supra*, 56 F.3d at pp. 1205-1206.) The court held that this demonstrated a complete breakdown of communications that substantially interfered with the presentation of an adequate defense. (*Id.* at p. 1206.) In this case, defendant discussed his defenses and his view of the case with defense counsel and defense counsel investigated each of the evidentiary issues and defenses that defendant raised. Defendant accepted the court's explanations and its reassurances that counsel's actions were proper and that counsel would work with defendant. The conflict between defendant and his counsel centered on counsel's assessment of the case and the wisdom of accepting the settlement offer, which in our view was not an irreconcilable conflict that was likely to result in ineffective representation.

In *Adelzo-Gonzalez*, the appellate court held that the district court failed to conduct an adequate inquiry into the defendant's motions to substitute counsel and consequently failed to recognize and act on a serious conflict between the defendant and his counsel that prevented counsel from providing adequate representation. (*Adelzo-Gonzalez*, *supra*, 268 F.3d at p. 781.) Although the district court did not inquire into the extent of the conflict between the defendant and his counsel, the defendant "recounted

bad language and threats made by his attorney, including statements that the attorney would 'sink him for 105 years' and that the attorney would testify against him." (*Id.* at p. 779.) In addition, defense counsel suggested to the court that his client had been coached, expressly called him a liar on two occasions, and took an adversary and antagonistic stance towards him at the motion to substitute counsel. (*Ibid.*) There was no such antagonism between defendant and his attorney in this case.

For these reasons, we conclude the court did not abuse its discretion when it denied the *Marsden* motions.

II. Restitution Fine

The court imposed a restitution fine of $2,000 pursuant to Penal Code[4] section 1202.4 and imposed and suspended a separate parole revocation restitution fine of $2,000 pursuant to section 1202.45.

Defendant contends that the restitution fines must be reduced from $2,000 to $1,000 each because the court erroneously relied on a count that had been stayed pursuant to section 654 in calculating the amount of the fines. The Attorney General concedes that the restitution fines must be reduced to $1,000.

Section 1202.4, subdivision (b) provides in relevant part: "In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. [¶] (1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, . . . [¶] (2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve,

[4] All further statutory references are to the Penal Code.

multiplied by the number of felony counts of which the defendant is convicted." In this case, the court calculated the fine as the product of $200 multiplied by defendant's five-year prison sentence, multiplied by two felony counts, for a total of $2,000.

But if the court stays a felony sentence pursuant to section 654, as the court did with the possession of cocaine count in this case, that felony cannot be considered in calculating the amount of the fine under the formula in section 1202.4, subdivision (b)(2) because using the stayed count in this way violates the section 654 ban on multiple punishment. (*People v. Le* (2006) 136 Cal.App.4th 925, 932-934.) Applying the formula in section 1202.4, subdivision (b)(2) with this limitation in mind results in a restitution fine of $1,000 (the product of $200 multiplied by defendant's five-year prison sentence, multiplied by one felony count). We therefore accept the Attorney General's concession and agree that the restitution fine (§ 1202.4) and the corresponding parole revocation restitution fine (§ 1202.45) must be reduced to $1,000 each.

DISPOSITION

The judgment is ordered modified to state that the amount of the restitution fine (§ 1202.4, subd. (b)) is $1,000 and the amount of the suspended parole revocation restitution fine (§ 1202.45) is $1,000. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment, setting forth these changes in the judgment, and to forward a certified copy of the amended abstract of judgment to the Department of Corrections.

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McAdams, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Mihara, J.